SEP 8 1995
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No. 95-123

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1995

R. WILLIAM GRAHAM
Petitioner,

v.

MARCIA J. MENGEL,
Clerk of the Supreme Court of Ohio and
Secretary of the Board of Bar Examiners,
et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF APPEALS FRANKLIN COUNTY, OHIO

PETITIONER'S REPLY BRIEF

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ARGUMENT

Every court that Petitioner has gone to has dismissed the lawsuit for lack of subject matter jurisdiction. This includes (a) the United States District Court for the Southern District of Ohio Western Division; (b) the Supreme Court of Ohio; and (c) the Court of Claims of Ohio. In each instance, Petitioner appealed the court's decision. In (a) above, Petitioner's appeal of the District Court's Decision was affirmed by the Court of Appeals for the Sixth Circuit. Certiorari was denied by the Supreme Court of the United States. In (b) above, Petitioner's Writ of Certiorari of the Ohio Supreme Court's decision was denied by the Supreme Court of the United States. In (c) above, Petitioner's appeal of the Court of Claims decision was affirmed by the Court of Appeals of Ohio, Tenth

Appellate District, and the appeal to the Ohio Supreme Court was denied on jurisdictional grounds. Now Petitioner is again asking the Supreme Court of the United States to grant Writ.

What if Writ is denied again? Is it possible that <u>all</u> these courts are correct -- that there is nowhere Petitioner can go to have his claim heard on the merits? That no court has subject matter jurisdiction? Obviously, this cannot be. Every claim has one court that has jurisdiction to hear the matter on its merits, and particularly so when the claim is one of constitutional issues. Or am I wrong?

For the Supreme Court of the United States to refuse Petitioner's claim now on the merits and uphold all these lower court decisions (that they did not have subject matter jurisdiction) is to violate

the very principle our judicial system is built upon -- <u>everyone</u> is entitled to Due Process of law, and that includes having the right to have at least one tribunal have subject matter jurisdiction over a claim. This is an inalienable right that is the very foundation of our judicial system.

On another front, Respondents are attempting to "pull the wool over" this Honorable Court's eyes by asserting (in their statement of facts) that the Federal District Court judge's decision and the Court of Claims judge's decision (both of which found against Petitioner on the merits of the case) dispose of the case on its merits. In fact, both judge's findings have no legal significance because both courts threw out the cause of action on jurisdictional grounds.

Respondents have no valid ground to

deny there was a violation of Petitioner's substantive Due Process and Equal Protection rights, and the proof of it is that they never addressed one single contention raised by Petitioner's forty-seven page argument asserting the denial of Petitioner's constitutional rights. Instead, Respondents merely asserted that the Federal District Court and the Ohio Court of Claims had already decided the substantive issues on the merits. That is like saying "our position should be upheld because it was decided that way in the lower court." That is no argument whatsoever. Petitioner filed a forty-seven page argument saying that the substantive law is on Petitioner's side. Respondents never addressed Petitioner's

Argument at all.[1]

Apparently, Respondents feel that this Honorable Court should and will not make its own independent analysis of the substantive issues in this case. Respondents seem to feel that the Supreme Court of the United States will just "rubber stamp" a lower court's findings. Consequently, they must have felt there is

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[1] Petitioner notes a typographical error occurred in his Writ at page 61, line 1, wherein after the word "graded" the words "do not" should have been included. The sentence should read "In other words, Mr. Jacobs concluded that 98.6 percent of the students he graded do not have minimum competency." Additionally, it should be noted that the following facts were omitted from Petitioner's Writ. Petitioner received an average score of 7.5 points out of 10 points per question on the two questions given and graded by eleven out of twelve examiners. The other remaining examiner, Mr. Jacobs, gave Petitioner an average score of 3.25 points on the two questions he graded resulting in Petitioner not passing the July 1990 Ohio Bar Exam by merely two points.

no reason to address any of the points raised in Petitioner's forty-seven page argument. Anyone reading Petitioner's argument would agree that Petitioner has presented a legitimate Federal constitutional issue for this Honorable Court's consideration.

Furthermore, summary reversal by this Honorable Court is in order because the Supreme Court of the United States has said a state cannot stop a person from practicing law "in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment." Though a state can require high standards of qualification before it admits an applicant to the bar, the Supreme Court of the United States has furthermore said "any qualification must have a rational connection with the applicant's fitness or capacity to

practice law." Federal Appellate Courts have said that courts may review the substance of an academic decision when the decision by the professional is "a substantial departure" from accepted professional practices, standards, or norms as to demonstrate the person did not actually exercise professional judgment.

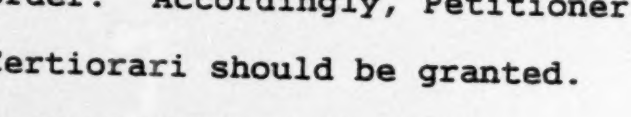
When one of the examiners of Petitioner's bar exam admitted he did not apply the same minimum competency percentage score set for the overall exam to the answers he graded, he violated professional practices, standards, and norms in grading because it is the adoption of the uniform minimum competency score for each answer that produces the minimum competency percentage score set for the overall exam. Consequently, there occurred a "break in the rational connection" between the test results and

the Petitioner's fitness and capacity to practice law, and, therefore, to preclude Petitioner from practicing law for not passing such an exam denied Petitioner the right to practice law for "reasons that contravene Due Process and Equal Protection Rights." Consequently, Summary reversal is indeed the appropriate remedy by this Honorable Court.

CONCLUSION

For the reasons stated above, a clear and present Federal constitutional issue cries out for this Honorable Court's review so much that summary reversal is in order. Accordingly, Petitioner's Writ of Certiorari should be granted.

Respectfully submitted,



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